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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/710,337	07/01/2004	Joseph Araujo	CT-P0001	4336

36067 7590 11/24/2006

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EXAMINER	
PERREIRA, MELISSA JEAN	

ART UNIT	PAPER NUMBER
1618	

DATE MAILED: 11/24/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/710,337	ARAUJO ET AL.	
	Examiner	Art Unit	
	Melissa Perreira	1618	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 1 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133): Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on 7/1/04.

2a)☐ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) 1-26 is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☐ Claim(s) _____ is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☒ Claim(s) 1-26 are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

DETAILED ACTION

Election/Restrictions

1. Restriction to one of the following inventions is required under 35 U.S.C. 121:

   I. Claims 1-12 are drawn to a method of determining the palatability of a food, food-stuff or veterinary biologic, classified in class 424, subclass 9.2.

   II. Claims 13-24 are drawn to a system for determining the palatability of a food, food-stuff or veterinary biologic, classified in class 424, subclass 9.2.

   III. Claims 25 and 26 are drawn to a product created by the process of determining the palatability of a food, food-stuff or veterinary biologic, classified in class 426, subclass 2 or 805.

The inventions are distinct, each from the other because of the following reasons:

2. Inventions II and I are related as product and process of use. The inventions can be shown to be distinct if either or both of the following can be shown: (1) the process for using the product as claimed can be practiced with another materially different product or (2) the product as claimed can be used in a materially different process of using that product. See MPEP § 806.05(h). In the instant case, the system for determining the palatability of a food, etc. comprising means for obtaining an animal and a means for administering a discrimination learning procedure to an animal. The discrimination learning procedure does not necessarily have to be used for determining the palatability of food, etc. These types of discrimination learning procedures can be utilized for other purposes, such as to train an animal to duplicate a desired behavior while the food reward provides a positive-reinforcement for such a behavior. For

instance, training an animal to choose a specific stimulus based on a preferred color, shape, etc. and rewarding that animal with a food or food-stuff would train that animal to always choose that preferred color, shape, etc. since they would be rewarded with a food or food-stuff. Also, a method for determining the palatability of a food, food-stuff, etc. is known and consist of placing two plates of food in front of an animal and recording the amount of each food the animal consumes. A search of the distinct inventions would require an undue burden of search for the Office.

3. Inventions I and III are related as process of making and product made. The inventions are distinct if either or both of the following can be shown: (1) that the process as claimed can be used to make another and materially different product or (2) that the product as claimed can be made by another and materially different process (MPEP § 806.05(f)). In the instant case, the product created by the process of determining the palatability does not necessarily require the use of a discrimination learning procedure. A method for determining the palatability of a food, food-stuff, etc. is known and consist of placing two plates of food in front of an animal and recording the amount of each food the animal consumes. The more palatable food or food-stuff could be the one that smells better to an animal and that would be the food or food-stuff, etc. that is chosen for consumption and could ultimately be determined to be the more palatable. A search of the distinct inventions would require an undue burden of search for the Office.

4. Inventions II and III are unrelated. Inventions are unrelated if it can be shown that they are not disclosed as capable of use together and they have different designs,

modes of operation, and effects (MPEP § 802.01 and § 806.06). In the instant case, the different inventions are the system for determining the palatability of a food, etc. comprising means for obtaining an animal and a means for administering a discrimination learning procedure to an animal and the product created by the process of determining the palatability of food, food-stuff, etc. The discrimination learning procedure does not necessarily have to be used for determining the palatability of food, etc. These types of discrimination learning procedures can be utilized for other purposes, such as to train an animal to duplicate a desired behavior while the food reward provides a positive-reinforcement for such a behavior. For instance, training an animal to choose a specific stimulus based on a preferred color, shape, etc. and rewarding that animal with a food or food-stuff would train that animal to always choose that preferred color, shape, etc. since they would be rewarded with a food or food-stuff. Also, the product created by the process of determining the palatability of a food, food-stuff, etc. can be created by the process of placing two dishes in front of an animal and recording the amount of each food the animal consumes. The more palatable food or food-stuff could be the one that smells better to an animal and that would be the food or food-stuff, etc. that is chosen for consumption and could ultimately be determined to be the more palatable. A search of the distinct inventions would require an undue burden of search for the Office.

5. Because these inventions are independent or distinct for the reasons given above and there would be a **serious burden on the examiner** if restriction is not

required because the inventions require a different field of search (see MPEP § 808.02), restriction for examination purposes as indicated is proper.

Applicant is advised that the reply to this requirement to be complete must include (i) an **election of an invention** to be examined even though the requirement be traversed (37 CFR 1.143) and (ii) identification of the claims encompassing the elected invention.

The election of an invention may be made with or without traverse. To reserve a right to petition, the election must be made with traverse. If the reply does not distinctly and specifically point out supposed errors in the restriction requirement, the election shall be treated as an election without traverse.

Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a request under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(i).
Due to the complex nature of the instant restriction requirement, a written restriction requirement was necessitated. See MPEP § 812.01.

6. Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a request under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(i).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Melissa Perreira whose telephone number is 571-272-1354. The examiner can normally be reached on 9am-5pm M-F.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mike Hartley can be reached on 571-272-0616. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

MP
November 10, 2006

MICHAEL G. HARTLEY
SUPERVISORY PATENT EXAMINER